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EXAMINER

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,468

Applicant(s)

BUCHI, BRYAN M.

Examiner

William V. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 19 apr 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

This is a First Action on the Merits. Claims 1-20 are pending.

Claim Objections

1. Claim 6 objected to because of the following informalities:

Examiner suggests "seem" line 7 should read --seam--.

Appropriate correction is required.

2. **Claim 17** is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding the claims, Claims 19 and 20 are claims drawn to a method of making a panel while the claims from which they depend (Claims 12 and 13) are methods drawn to using a panel, which renders Claims 19 and 20 indefinite as two different statutory matter are claimed (i.e. a method of making and a method of using). One suggestion by the Examiner is to make Claim 19 an independent claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6, 8, 9, 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Price (U.S. Patent No. 6,691,471).

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Claim 1: Price discloses an artificial cover (Fig. 2) having a first side (33) with a three-dimensional rock pattern protruding from the first side, and a second side configured to contact an underlying structure.

Claims 3 and 9: the underlying structure is a foundation of a home (Fig 1).

Claim 5, 11 and 17: the cover attaches to the underlying structure with screws (Col 13: lines 12-15).

Claim 6: Price discloses a cover having first and second sections (Fig. 10) having a three-dimensional rock pattern (Fig. 2) and configured to attach to an underlying structure, where the sections meet at a corner (Fig. 10) to form a seam (51) and the second section overlaps an edge of the first section.

Claim 8: the cover is plastic (Col. 5 lines 43-45).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price in view of Trousilek (U.S. Patent No. 5,465,545).

Claims 2 and 7: Price discloses the claimed invention including that the panel can be made of plastic (Col. 5, line 45) but not that the cover is polyurethane. Trousilek discloses a panel made of a plastic including polyurethane (Col. 7, lines 50-55). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the panel out of polyurethane because polyurethane is a plastic and would perform equally as well with the plastic in Price.

Claims 4, 10, 12-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price.

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Claims 4 and 10: Price discloses the claimed invention including a staircase (Fig. 1), but it does not disclose the cover covering the staircase. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to cover the staircase with the covering as well in order to make the overall structure more aesthetically pleasing.

Claim 12: Price discloses a method for securing a cover to a structure by securing a first side on an underlying structure (see Figs. 10: 12a and Fig. 11) such that the edge of the first section is flush with a second side of the underlying structure, and the structure have a three dimensional pattern of artificial rock protruding (Fig. 2), securing a second section (Fig 10: 12b) with a three dimensional pattern of artificial rock to the second side of the structure so that one end of the second section overhangs the edge of the first section, where the first and second sections meet at a corner to form a seam and applying a securing means (Fig. 10: 56), where the means matches the appearance of the sections as best understood by the Examiner. Price does not disclose trimming an end of the second section such that the second section is flush with the first section. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to trim the second

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section to be flush with the first section so that the final product is esthetically pleasing.

Claim 13: the securing means is glue (Col 3, line 55).

Claim 14: Price discloses the claimed invention except that the edge is colored. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to color the edge to match the rock pattern so that the final structure is aesthetically pleasing.

Claim 15: Price discloses the claimed invention except for coloring the means before applying to the seam. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to color the means before applying it to the seam because one of ordinary skill in the art would find this as a matter of convenience as opposed to matching the color of the means after installation.

Claim 16: Price discloses the claimed invention except for mixing pieces of the wall before being applied to the seam. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to mix pieces of the wall in order for the means to better match and blend in with the present wall.

Claim 18: Price discloses the claimed invention except for painting over the screws to match the color of the wall. It

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would have been obvious at the time the invention was made to a person having ordinary skill in the art to paint over the screws to match the color of the wall in order to conceal the screws.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price in view of Grieb (U.S. Patent No. 3,330,080) and Higgins (U.S. Patent No. 3,133,838).

Claims 19 and 20: Price discloses the claimed invention except for the steps of forming the panel. Grieb discloses coating a mold with a release (Col. 2, lines 65-70) applying polyurethane to form a liner (Col. 1, lines 45-50: though the polyurethane has a coating, it is still a polyurethane panel under the broadest reasonable interpretation). Further Price does not disclose coloring the pattern with an alkyd paint (Claim 20). Higgins discloses a panel with an alkyd coating. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to form the panel in the manner claimed because one of ordinary skill in the art would coat a mold with a release to avoid accidental adhesion of the panel to the mold and one would obviously remove the liner once it has cured. Further one of ordinary skill in the art would use an alkyd paint because alkyd paint has a relatively short drying time compared to other paints.

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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